



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV106-6044; FRL-9983-55-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia;
Update to Materials Incorporated by Reference**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the West Virginia state implementation plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection (WV DEP) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective **[insert date of publication in the Federal Register]**.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Erin Trouba, (215) 814-2023 or by e-mail at trouba.erin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52 “Approval and Promulgation of Implementation Plans,” title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is “incorporated by reference.” This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which

a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997, **Federal Register** document. On February 10, 2005 (70 FR 7024), EPA published a **Federal Register** beginning the new IBR procedure for West Virginia. On February 28, 2007 (72 FR 8903), February 10, 2009 (74 FR 6542), December 28, 2010 (75 FR 81474), July 25, 2013 (78 FR 44884), and June 14, 2017 (82 FR 27118) EPA published updates to the IBR material for West Virginia. Since the publication of the last IBR update, EPA has approved into the SIP the following regulatory changes to the following West Virginia regulations:

A. Added Regulations

None

B. Revised Regulations

1. 45 CSR 8 (Ambient Air Quality Standards)
2. 45 CSR 14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration)

C. Removed Regulations

1. 45 CSR 39 (Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides)
2. 45 CSR 41 (Control of Annual Sulfur Dioxides Emissions)
3. In 52.2520 paragraph (d) Source Specific Requirements for West Virginia, there was a removal of source-specific SIP requirements for the following five facilities in West Virginia that had permanently shutdown: Mountaineer Carbon Company; Standard Lafarge; Follansbee Steel Corporation; International Mill Service, Inc.; and Columbian Chemicals Company.

II. EPA Action

In this action, EPA is announcing the update to the IBR material as of May 1, 2018 and revising the text within 40 CFR 52.2520(b). In addition, notice is provided of correcting **Federal Register** citations listed in the Table (c) paragraph of 40 CFR 52.2520, as described:

A. Under the “EPA approval date” EPA is correcting numerous **Federal Register** citation locations to reflect the first page of the preamble opposed to the regulatory text page for West Virginia regulations 45 CSR Series 8 and 45 CSR Series 14.

III. Good Cause Exemption

EPA has determined that this rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA,

an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA approved regulations promulgated by the State of West Virginia and federally effective prior to May 1, 2018. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for West Virginia.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2018.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX - West Virginia

2. Section 52.2520 is amended by:

a. Revising paragraph (b).

b. Revising paragraph (c) table entries for 45 CSR 8 (Ambient Air Quality Standards) and 45 CSR 14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration).

The revisions read as follows:

§ 52.2520 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to May 1, 2018, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after May 1, 2018 for the State of West Virginia have been approved by EPA for inclusion in the State implementation plan and for incorporation by reference into the plan as it is contained in this

section, and will be considered by the Director of the Federal Register for approval in the next update to the SIP compilation.

(2) EPA Region III certifies that the materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference into the state implementation plan may be inspected at the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. To obtain the material, please call the Regional Office at (215) 814-3376. You may also inspect the material with an EPA approval date prior to May 1, 2018 for the State of West Virginia at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) *EPA-Approved Regulations and Statutes.*

EPA-Approved Regulations in the West Virginia SIP

State citation [Chapter 16 - 20 or 45 CSR]	Title/subject	State effectiv e date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
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[45 CSR] Series 8	Ambient Air Quality Standards			
Section 45-8-1	General	6/1/17	3/23/18, 83 FR 12677	Filing and effective

State citation [Chapter 16 - 20 or 45 CSR]	Title/subject	State effectiv e date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
				dates are revised.
Section 45-8-2	Definitions	6/1/17	3/23/18, 83 FR 12677	Previous Approval 9/22/2014.
Section 45-8-3	Adoption of Standards	6/1/17	3/23/18, 83 FR 12677	Effective date is revised.
Section 45-8-4	Inconsistency Between Rules	6/1/17	3/23/18, 83 FR 12677	Replaced “West Virginia Department of Environmenta l Protection” with “Division of Air Quality.”
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[45 CSR] Series 14	Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration			
Section 45-14-1	General	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-2	Definitions	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-3	Applicability	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-4	Ambient Air Quality Increments and Ceilings	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-5	Area Classification	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-6	Prohibition of Dispersion	06/01/2	08/11/2016,	

State citation [Chapter 16 - 20 or 45 CSR]	Title/subject	State effectiv e date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
	Enhancement Techniques	015	81 FR 53008	
Section 45-14-7	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-8	Requirements Relating to Control Technology	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-9	Requirements Relating to the Source's Impact on Air Quality	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-10	Modeling Requirements	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-11	Air Quality Monitoring Requirements	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-12	Additional Impacts Analysis Requirements	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-13	Additional Requirements and Variances for Source Impacting Federal Class 1 Areas	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-14	Procedures for Sources Employing Innovative Control Technology	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-15	Exclusions From Increment Consumption	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-16	Specific Exemptions	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-17	Public Review Procedures	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-18	Public Meetings	06/01/2 015	08/11/2016, 81 FR	

State citation [Chapter 16 - 20 or 45 CSR]	Title/subject	State effectiv e date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
			53008	
Section 45-14-19	Permit Transfer, Cancellation and Responsibility	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-20	Disposition of Permits	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-21	Conflict with Other Permitting Rules	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-25	Actual PALs	06/01/2 015	08/11/2016, 81 FR 53008	
Section 45-14-26	Inconsistency Between Rules	06/01/2 015	08/11/2016, 81 FR 53008	
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